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14
15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17

18 CISCO SYSTEMS, INC., and
CISCO TECHNOLOGY, INC.,

19 Plaintiff,

20 v.

21 DEXON COMPUTER, INC.,

22 Defendant.
23

Case No. 3:20-cv-4926

**DEFENDANT DEXON
COMPUTER, INC.'S NOTICE OF
MOTION AND MOTION TO
DISMISS FOR LACK OF
PERSONAL JURISDICTION**

Date: November 5, 2020
Time: 10:00 a.m.
Crtrm:

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on November 5, 2020, at 10:00 a.m., or as soon
3 thereafter as counsel may be heard, Defendant Dexon Computer, Inc. (“Dexon”) will
4 move under Rule 12(b)(2) of the Federal Rules of Civil Procedure for an order
5 dismissing all claims in Plaintiffs Cisco Systems, Inc. and Cisco Technology, Inc.’s
6 (“Cisco”) Complaint for lack of personal jurisdiction or, alternatively, for an order
7 transferring this action under 28 U.S.C. § 1404, to the United States District Court of
8 Minnesota.

9 This Motion is based on this Notice of Motion and Motion; the following
10 Memorandum of Points and Authorities; the Declaration of Stephen O’Neil in
11 Support of Dexon’s Motion to Dismiss (“O’Neil Decl.”) and the exhibits attached
12 thereto; the record in this matter; and such other and further papers, evidence, and
13 argument as may be submitted to support this Motion.

14
15
16 Dated: September 25, 2020

John A. Conkle,
Amanda R. Washton, member of
CONKLE, KREMER & ENGEL
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21 By: /s/John A. Conkle

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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	6
II. FACTUAL BACKGROUND	7
A. DEXON COMPUTER, INC.	7
B. THIS LAWSUIT	8
III. ARGUMENT	8
A. PERSONAL JURISDICTION	8
1. Legal Standard	8
2. No General Jurisdiction	10
3. No Specific Jurisdiction.....	11
a. Sales to third parties outside California	12
b. Shipments to Cisco’s Investigators in California.....	14
c. Purchases from a defendant in Related Litigation	15
B. TRANSFER	17
1. Legal Standard	17
2. The Private and Public Interest Factors Favor Transfer	17
IV. CONCLUSION	18

TABLE OF AUTHORITIES

Page

CASES

<i>Adobe Sys. Inc. v. Trinity Software Distrib., Inc.</i> , No. 12-cv-1614(SI), 2012 WL 3763643 (N.D. Cal. Aug. 29, 2012)	14
<i>Axiom Foods, Inc. v. Acerchem Int'l, Inc.</i> , 874 F.3d 1064 (9th Cir. 2017)	passim
<i>Ayla, LLC v. Alya Skin Pty. Ltd.</i> , No. 19-cv-00679(HSG), 2019 WL 5963149 (N.D. Cal. Nov. 13, 2019)	14
<i>Bancroft & Masters, Inc. v. Augusta Nat'l Inc.</i> , 223 F.3d 1082 (9th Cir. 2000)	11
<i>Brand v. Menlove Dodge</i> , 796 F.2d 1070 (9th Cir. 1986)	11
<i>Burger King v. Rudzewicz</i> , 471 U.S. 462 (1985)	12, 16
<i>Calder v. Jones</i> , 465 U.S. 783 (1984)	10, 12, 15
<i>Cisco Sys. Inc. v. Link US, LLC</i> , No. 18-cv-07576-CRB, 2019 WL 6682838 (N.D. Cal. Dec. 6, 2019)	9
<i>Clarus Transphase Scientific, Inc. v. Q-Ray, Inc.</i> , No. 06-cv-3450(JF/RS), 2006 WL 2374738 (N.D. Cal. Aug. 16, 2006)	14
<i>CollegeSource, Inc. v. AcademyOne, Inc.</i> , 653 F.3d 1066 (9th Cir. 2011)	12
<i>Daimler AG v. Bauman</i> , 571 U.S. 117 (2014)	9
<i>Data Disc, Inc. v. Systems Tech. Assoc., Inc.</i> , 557 F.2d 1280 (9th Cir. 1977)	9
<i>Dole Food Co. v. Watts</i> , 303 F.3d 1104 (9th Cir. 2002)	17
<i>Dow Chem. Co. v. Calderon</i> , 422 F.3d 827 (9th Cir. 2005)	9
<i>Five Star Gourmet Foods, Inc. v. Fresh Express, Inc.</i> , No. 19-CV-05611-PJH, 2020 WL 1244918 (N.D. Cal. Mar. 16, 2020)	13
<i>Flynt Distrib. Co. v. Harvey</i> , 734 F.2d 1389 (9th Cir. 1984)	9

1	<i>Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clemens Ltd.</i> ,	
2	328 F.3d 1122 (9th Cir. 2003).....	9
3	<i>Helicopteros Nacionales de Colombia, S.A. v. Hall</i> ,	
4	466 U.S. 408 (1984)	10
5	<i>Hughes v. Wal-Mart Stores, Inc.</i> ,	
6	250 F.3d 618 (8th Cir. 2001).....	18
7	<i>Int’l Shoe Co. v. State of Wash., Office of Unemployment Comp. &</i>	
8	<i>Placement</i> ,	
9	326 U.S. 310 (1945)	9
10	<i>Jones v. GNC Franchising, Inc.</i> ,	
11	211 F.3d 495 (9th Cir. 2000).....	17
12	<i>Lou v. Belzberg</i> ,	
13	834 F.2d 730 (9th Cir. 1987).....	18
14	<i>Matson Navigation Co., Inc. v. Sherwin-Williams Co.</i> ,	
15	No. 17-cv-00081(EDL), 2017 WL 7310771 (N.D. Cal. Sept. 11, 2017)	16
16	<i>Schwarzenegger v. Fred Martin Motor Co.</i> ,	
17	374 F.3d 797 (9th Cir. 2004).....	passim
18	<i>Swartz v. KPMG LLP</i> ,	
19	476 F.3d 756 (9th Cir. 2007).....	9
20	<i>Theos Med. Sys., Inc. v. Nytone Med. Prod., Inc.</i> ,	
21	No. 19-cv-01092(VKD), 2020 WL 500511 (N.D. Cal. Jan. 31, 2020)	14
22	<i>Toro Co. v. Hunter Indus. Inc.</i> ,	
23	No. 14-cv-4463 (MJD/FLN), 2015 WL 4545403 (D. Minn. July 27,	
24	2015).....	18
25	<i>Walden v. Fiore</i> ,	
26	571 U.S. 287 (2014)	13, 15
27	<u>STATUTES</u>	
28	15 U.S.C. § 1114.....	8
	15 U.S.C. § 1125.....	8
	28 U.S.C. § 1404.....	2, 17
	Cal. Bus. Prof. Code §§ 17200 et seq.....	8

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 As the saying goes, no good deed goes unpunished. Over a year ago, Cisco
4 served Dexon with a subpoena seeking documents allegedly relevant to a lawsuit
5 currently pending in this district against several alleged manufacturers and
6 distributors of counterfeit Cisco product (*Cisco Systems, Inc., et al. v. Sheikh, et al.*,
7 No. 4:18-cv-7602(YGR) (N.D. Cal.) (the “Related Litigation”)). Dexon, a non-party
8 to the Related Litigation, objected to the breadth of the subpoena. However, Dexon
9 voluntarily agreed to produce all of its purchase orders relating to PureFutureTech,
10 LLC (“PFT”), a Defendant in the Related Litigation and the sole entity identified in
11 Cisco’s subpoena from which Dexon purchased allegedly counterfeit Cisco products.

12 Claiming the subpoenaed information was highly relevant and critical to the
13 Related Litigation, Cisco continued to demand all of Dexon’s records, including
14 confidential information disclosing the identity of and contact information for
15 Dexon’s end customers. (O’Neil Decl., Ex. B).

16 Cisco ultimately brought a motion to compel in the District of Minnesota. *Id.*
17 The Court sided with Dexon and determined the subpoena was overbroad. *Id.* In fact,
18 Dexon was ultimately required to produce less than it originally voluntarily offered
19 to produce. *Id.* Specifically, the Court only required Dexon to produce documents
20 covering products for which Cisco could make an adequate showing of potential
21 counterfeiting. *Id.*

22 In addition to complying with the Court’s Order, Dexon continued to assist
23 Cisco in its anti-counterfeiting efforts, including working with its end customers to
24 supply Cisco with digital console read-outs for certain products.

1 Just four months later, Cisco filed the present lawsuit naming Dexon—an
2 innocent “middleman” computer reseller—as a party. The timing of the lawsuit is
3 suspect. In addition to coming on the heels of its unsuccessful subpoena, the majority
4 of the allegations in the complaint involve sales occurring several years ago.
5 Accordingly, Dexon is understandably concerned the lawsuit is merely an attempt to
6 obtain the information Cisco previously claimed was highly relevant and critical to
7 the Related Litigation by naming Dexon as a party.

8 Regardless, there is absolutely no basis for personal jurisdiction over Dexon in
9 California. Dexon does not have any offices, employees, or agents in California.
10 Moreover, Dexon has a de minimis amount of sales to California customers. In fact,
11 the sole alleged relevant contacts between Dexon and California are the efforts of
12 Cisco’s own personal investigators to attempt to “set up” Dexon by soliciting Dexon
13 sales into California. It is well-established that such “self-created” contacts with the
14 forum do not satisfy the minimum contacts requirement under the Due Process
15 Clause. Accordingly, this Court should dismiss the Complaint in its entirety for lack
16 of personal jurisdiction.

17 Alternatively, because the majority of potential witnesses reside in Minnesota,
18 and because the majority of discoverable and relevant evidence is housed or stored in
19 Minnesota, this Court should transfer this case to the United States District Court of
20 Minnesota.

21 **II. FACTUAL BACKGROUND**

22 **A. DEXON COMPUTER, INC.**

23 Dexon is a Minnesota corporation that was founded in 1992. (O’Neil Decl., ¶
24 2). It sells, rents, and services new, refurbished, and discontinued networking
25 hardware. (*Id.*, ¶ 3). Some of its product offerings include routers, servers, switches,
26 transceivers and phones. (*Id.*).

1 Dexon has one office, which is in Bloomington, Minnesota. (*Id.*, ¶ 4). Its
 2 registered agent's address is in Minneapolis, Minnesota. (*Id.*). Dexon has
 3 approximately 23 employees, all of whom reside and physically work in Minnesota.
 4 (*Id.*, ¶ 5). Dexon does not have any employees, offices, or service-of-process agents
 5 in California. (*Id.*, ¶ 6). It is not licensed to do business in California, owns no
 6 property in California, and pays no taxes there. (*Id.*, ¶ 7). Dexon does not do any
 7 direct advertising in California. Specifically, Dexon does not run any print, television
 8 or radio ads with circulation in or near California. (*Id.*, ¶ 8)

9 Dexon has sold a de minimis amount of product to customers with a California
 10 shipping address. Specifically, for the period July 1, 2017 thru December 31, 2019,
 11 just 2.9% of Dexon's revenue from Cisco products involved customers with a
 12 California shipping address. (*Id.*, ¶ 9). Such products are often drop-shipped directly
 13 from Dexon's third-party suppliers and vendors. (*Id.*).

14 **B. THIS LAWSUIT**

15 After working with Cisco for more than a year to produce documents allegedly
 16 relevant to the Related Litigation, and only after the District of Minnesota rejected
 17 Cisco's attempts to force non-party Dexon to produce a much broader scope of
 18 documents, Cisco filed this lawsuit in the Northern District of California on July 22,
 19 2020. (Doc. No. 1). The five-count Complaint asserts claims against Dexon for (1)
 20 federal trademark infringement under 15 U.S.C. § 1114; (2) federal trademark
 21 counterfeiting under 15 U.S.C. § 1114; (3) false designation of origin under 15 U.S.C.
 22 § 1125; (4) unfair competition under Cal. Bus. Prof. Code §§ 17200 et seq.; and (5)
 23 unjust enrichment. (*Id.*, at 15-20, ¶¶ 55-84).

24 **III. ARGUMENT**

25 **A. PERSONAL JURISDICTION**

26 1. Legal Standard

27 A defendant may move to dismiss for lack of personal jurisdiction. Fed. R.
 28 Civ. P. 12(b)(2). The plaintiff has the burden of demonstrating that jurisdiction is

proper. *Flynt Distrib. Co. v. Harvey*, 734 F.2d 1389, 1392 (9th Cir. 1984). Because this Court has not yet held an evidentiary hearing, the plaintiff is required only to make out a prima facie case of jurisdiction, which is met if the plaintiff points to “admissible evidence which, if believed, would be sufficient to establish personal jurisdiction.” *Cisco Sys. Inc. v. Link US, LLC*, No. 18-cv-07576-CRB, 2019 WL 6682838, at *2 (N.D. Cal. Dec. 6, 2019) (citing *Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clemens Ltd.*, 328 F.3d 1122, 1129 (9th Cir. 2003)). Critically, the plaintiff must cite specific evidence; “mere ‘bare bones’ assertions of minimum contacts with [California] or legal conclusions unsupported by specific factual allegations will not satisfy [the] pleading burden.” *Swartz v. KPMG LLP*, 476 F.3d 756, 766 (9th Cir. 2007). In determining whether to exercise jurisdiction, this Court may consider supporting affidavits. *Data Disc, Inc. v. Systems Tech. Assoc., Inc.*, 557 F.2d 1280, 1285 (9th Cir. 1977).

Courts test personal jurisdiction over a non-resident defendant (like Dexon) under a two-part analysis: the exercise of jurisdiction must (1) “satisfy the requirements of the applicable long-arm statute” and (2) “comport with federal due process.” *Dow Chem. Co. v. Calderon*, 422 F.3d 827, 830 (9th Cir. 2005). California’s long-arm statute, however, is coterminous with Constitutional limits. Cal. Civ. Proc. Code § 410.10; see *Daimler AG v. Bauman*, 571 U.S. 117, 125 (2014) (“California’s long-arm statute allows the exercise of personal jurisdiction to the full extent permissible under the U.S. Constitution.”). For that reason, the two-part inquiry turns into one. See *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 801 (9th Cir. 2004) (“[T]he jurisdictional analyses under state law and federal due process are the same.”).

To comport with federal due process, Dexon must have “certain minimum contacts with [California] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *Int’l Shoe Co. v. State of Wash., Office of Unemployment Comp. & Placement*, 326 U.S. 310, 316 (1945)

(quotations omitted). The minimum contacts analysis focuses on “the relationship among the defendant, the forum, and the litigation.” *Calder v. Jones*, 465 U.S. 783, 788 (1984) (quotation omitted)). Personal jurisdiction over a non-resident defendant may be general or specific. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984). Here, Cisco appears to allege both. (Doc. No. 1).

2. No General Jurisdiction

General jurisdiction arises if a defendant has “substantial” or “continuous and systematic” contacts with the forum. *Helicopteros*, 466 U.S. at 415. “This is an exacting standard, as it should be, because a finding of general jurisdiction permits a defendant to be haled into court in the forum state to answer for any of its activities anywhere in the world.” *Schwarzenegger*, 374 F.3d at 801.

Here, Cisco alleges that Dexon has sold products to California customers, “has continuously operated [a] website,” and “has purposefully maintained contacts within the State of California for the purpose of conducting business there.” (Doc. No. 1 at 3, ¶ 9). Cisco’s allegations do not come close to establishing that Dexon is “at home” in California. *Daimler*, 571 U.S. at 139.

First, Dexon has no offices, employees, property, or agents in California. It is incorporated in Minnesota, and its principal place of business is in Minnesota. Although Dexon has sold products to California residents, such de minimis sales do not establish the requisite continuous and systematic contacts in the state. *See Helicopteros*, 466 U.S. at 418 (“[M]ere purchases, even if occurring at regular intervals, are not enough” to establish general jurisdiction). As the Supreme Court has cautioned, “[i]f [Dexon]’s California activities sufficed to allow adjudication of this [Minnesota]-rooted case in California, the same . . . reach would presumably be available in every other State in which [Dexon]’s sales are sizable.” *Daimler*, 571 U.S. at 139.

1 Second, operating a website is not sufficient to establish general jurisdiction
 2 over Dexon in California. For example, in *Schwarzenegger v. Fred Martin Motor*
 3 *Co.*, the defendant had, among other contacts, “an Internet website accessible by
 4 anyone capable of using the Internet, including people living in California.” 374 F.3d
 5 at 801. The Ninth Circuit reasoned that operating a website falls short of meeting the
 6 general jurisdiction standard because it merely establishes that a defendant does
 7 business *with* California, not in California. *Id.* (citing *Bancroft & Masters*, 223 F.3d
 8 at 1086).

9 Likewise, Cisco has failed to establish that Dexon has substantial or continuous
 10 and systematic contacts with California such that it could be sued in California
 11 regardless of the claim brought against it. *See Bancroft & Masters, Inc. v. Augusta*
 12 *Nat’l Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000) (“The standard for establishing general
 13 jurisdiction is fairly high, and requires that the defendant’s contacts be of the sort that
 14 approximate physical presence.”) (internal quotations and citations omitted)); *see also*
 15 *Brand v. Menlove Dodge*, 796 F.2d 1070, 1073 (9th Cir. 1986) (collecting cases where
 16 courts determined that no general jurisdiction existed despite significant forum
 17 contacts). For the above reasons, general jurisdiction does not exist over Dexon in
 18 California.

19 3. No Specific Jurisdiction

20 Cisco’s Complaint also falls short of establishing a prima facie basis for this
 21 Court to exercise specific jurisdiction over Dexon. A court may exercise specific
 22 jurisdiction over a nonresident defendant if all three of the following requirements are
 23 met:

24 (1) the defendant must either purposefully direct his activities toward the
 25 forum or purposefully avail[] himself of the privileges of conducting
 26 activities in the forum; (2) the claim must be one which arises out of or
 27 relates to the defendant’s forum-related activities; and (3) the exercise of
 jurisdiction must comport with fair play and substantial justice, i.e. it
 must be reasonable.

28 *Axiom Foods, Inc. v. Acerchem Int’l, Inc.*, 874 F.3d 1064, 1068 (9th Cir. 2017)

(quotations omitted). Cisco has the burden to establish the first two prongs. *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1076 (9th Cir. 2011). If Cisco can do so, the burden shifts to Dexon to establish a “‘compelling case’ that the exercise of jurisdiction would not be reasonable.” *Id.* (quoting *Burger King v. Rudzewicz*, 471 U.S. 462, 476-78 (1985)).

In tort cases, courts analyze the first prong under “the purposeful direction test,” which derives from the *Calder* “effects” test. *Axiom*, 874 F.3d at 1068 (citing *Calder v. Jones*, 465 U.S. 783 (1984)). To satisfy the purposeful direction test, the plaintiff must establish that the defendant “(1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state.” *Id.* (quotation omitted).

Cisco relies on three types of purported contacts to attempt to force Dexon to defend itself in this foreign district:

(1) sales to third parties outside California (Doc. No. 1 at ¶¶ 36-38, ¶¶ 40-43, ¶¶ 47-52);

(2) shipments to Cisco investigators in California (*id.* at ¶ 39, ¶ 53); and

(3) purchases of products from a defendant in the Related Litigation (*id.* at ¶¶ 44-46).

It is firmly established that none of these three alleged activities give rise to specific jurisdiction.

a. Sales to third parties outside California

First, Cisco alleges that sales of alleged counterfeit products to states other than California establish that Dexon “expressly aimed” its conduct at California. Out of the ten examples of specific contacts alleged in the complaint, seven of them involve sales of allegedly counterfeit products to companies in states other than California. *See* (Doc. No. 1 at ¶¶ 36-38 (Missouri), ¶ 40 (Arizona), ¶¶ 41-42 (Maryland), ¶ 43 (Minnesota), ¶¶ 47-48 (Kentucky), ¶ 49 (Pennsylvania), and ¶¶ 50-52 (Texas)). In fact, Cisco has failed to allege a single sale of purportedly counterfeit product by

1 Dexon to a true end consumer in California. *See (id.)*.

2 Cisco's allegations that Dexon intended to cause harm in California by selling
3 products outside the state do not satisfy the purposeful direction test. Rather, the
4 Court "must look to the defendant's 'own contacts' with the forum, not to the
5 defendant's knowledge of a plaintiff's connections to a forum." *Axiom*, 874 F.3d at
6 1069-70 (quoting *Walden v. Fiore*, 571 U.S. 287-88 (2014)). Even if Dexon's
7 "intentional act eventually caused harm to [Cisco] in California, and [Dexon] may
8 have known that [Cisco] lived in California . . . [,] this does not confer jurisdiction . .
9 . ." *Schwarzenegger*, 374 F.3d at 807.

10 For example, in a similar case in this District also involving Cisco, Cisco
11 "incorrectly argue[d] that the effects test [wa]s satisfied by allegations that [a plaintiff]
12 intentionally infringed [Cisco's] intellectual property rights knowing [Cisco] was
13 located in the forum state." *Cisco Sys. Inc.*, 2019 WL 6682838, at *4. The district
14 court explained that the "Ninth Circuit has held such allegations inadequate to
15 establish personal jurisdiction after *Walden v. Fiore*, 571 U.S. 277 (2014), which
16 'made clear that we must look to the defendant's 'own contacts' with the forum, not
17 to the defendant's knowledge of a plaintiff's connections to a forum.'" *Id.* (quoting
18 *Axiom*, 874 F.3d at 1069-70 (quoting *Walden*, 571 U.S. at 287-88)). As in that case,
19 here, Cisco improperly relies on general allegations, which is not sufficient. *See Five*
20 *Star Gourmet Foods, Inc. v. Fresh Express, Inc.*, No. 19-CV-05611-PJH, 2020 WL
21 1244918, at *7 (N.D. Cal. Mar. 16, 2020) ("Plaintiffs argue that California is the focal
22 point of their harm because Five Star's business is centered in California and thus the
23 brunt of the harm Five Star suffers from the imitation product is in California. This is
24 precisely the sort of plaintiff-centered harm that *Walden* and *Axiom Foods*
25 foreclosed").

26 Moreover, Cisco is fully aware the allegations herein are not analogous to the
27 allegations in the Related Litigation. There is no allegation Dexon knowingly
28 "schemed" to manufacture and import counterfeit Cisco products. Rather, at worst,

1 Dexon is an innocent “middle man” victimized by the presence of counterfeit Cisco
 2 products in the distribution chain. In fact, Cisco’s own partners and authorized sellers
 3 are likewise routinely victimized and caught unknowingly selling counterfeit
 4 products. (O’Neil Decl., Ex. A).

5 *b. Shipments to Cisco’s Investigators in California*

6 The next two examples of specific contacts involve Cisco’s attempts to “set up”
 7 Dexon via purchases made by Cisco investigators. The first such “fake” order
 8 involved a California address. (Doc. No. 1 at ¶ 39, ¶ 53). The second such “fake”
 9 order involved an unidentified location or address. (*Id.* at ¶ 53).

10 It is well established in this District that such contacts cannot satisfy the
 11 purposeful direction test. As recognized by this Court in a prior case involving Cisco,
 12 which is directly on point, “[Cisco] cannot manufacture personal jurisdiction . . . by
 13 purchasing the accused product in the forum state.” *Cisco*, 2019 WL 6682838, at *2
 14 (quoting *Adobe Sys. Inc. v. Trinity Software Distrib., Inc.*, No. 12-cv-1614(SI), 2012
 15 WL 3763643, at *6 (N.D. Cal. Aug. 29, 2012)); see *Theos Med. Sys., Inc. v. Nytone*
 16 *Med. Prod., Inc.*, No. 19-cv-01092(VKD), 2020 WL 500511, at *6 (N.D. Cal. Jan.
 17 31, 2020) ([C]ourts within this district have held that a plaintiff cannot manufacture
 18 personal jurisdiction in a case by making such purchases in the forum state.”); *Clarus*
 19 *Transphase Scientific, Inc. v. Q-Ray, Inc.*, No. 06-cv-3450(JF/RS), 2006 WL
 20 2374738, at *3 n.3 (N.D. Cal. Aug. 16, 2006) (“A plaintiff cannot manufacture
 21 personal jurisdiction in a trademark case by purchasing the accused product in the
 22 forum state.”); *Ayla, LLC v. Alya Skin Pty. Ltd.*, No. 19-cv-00679(HSG), 2019 WL
 23 5963149, at *4 n.1 (N.D. Cal. Nov. 13, 2019) (“Plaintiff’s hiring of investigators to
 24 purchase and receive the products in California does not change the outcome.”).

25 To illustrate, in *Cisco Sys. Inc. v. Link US, LLC*, Cisco alleged that the court
 26 could exercise specific jurisdiction over the defendant-company president because he
 27 shipped allegedly counterfeit products to a Cisco investigator in California. 2019 WL
 28 6682838, at *2. The district court reasoned that “sales of counterfeit goods to Cisco’s

investigator . . . cannot establish express aiming because the personal jurisdiction analysis focuses on the defendant's, not the plaintiff's, contacts with the forum." *See Id.* ("It would . . . be incongruous to allow the plaintiff to unilaterally create personal jurisdiction.") (quotations omitted).

Ignoring the district court's reasoning in that case, Cisco attempts to hale Dexon into California on the same basis. Such unilateral contacts do not satisfy the "effects" test, especially where those shipments were made to help Cisco with its broader investigation of counterfeit products. *Id.*

c. Purchases from a defendant in Related Litigation

Lastly, Cisco relies on Dexon's purchase of allegedly counterfeit products from California company PFT, a Defendant in the Related Litigation. (Doc. No. 1 at ¶¶ 44-46). Such conduct does not support a finding of specific jurisdiction.

For example, in *Premier Fabrics, Inc. v. Walters & Mason Retail, Inc.*, the "Plaintiff argue[d] that [Defendant]'s purchases of the allegedly infringing products from [a California company] [we]re sufficient to satisfy the express aiming requirement." No. 18-cv-2126-JFW(SKX), 2018 WL 6164766, at *5 (C.D. Cal. Aug. 1, 2018). The Court rejected this argument. *Id.* Relying on *Walden*, the district court determined that such purchases failed to satisfy the express aiming requirement. *Id.* The district court also "conclude[d] that Plaintiff ha[d] failed to establish the final prong of Calder" even though the Defendant's "allegedly tortious conduct consist[ed] of purchasing allegedly infringing garments from Famma, a vendor who happened to be located in California, and then selling those garments to consumers outside of California." *Id.* at *6. The district court ultimately decided that the plaintiff had failed to establish a prima facie case of jurisdiction and granted the Defendant's Rule 12(b)(2) motion to dismiss. *Id.* at *8. The same should happen here.

Even if Cisco can ultimately establish that any PFT product purchased by Dexon was counterfeit, it is important to note that there is absolutely no suggestion or allegation Dexon purchased such product knowing it was counterfeit. (Doc. No. 1 at

¶¶ 44-46). On the contrary, Cisco’s own allegations acknowledge that not all of the Cisco product sold by PFT was counterfeit. (*Id.*) Moreover, unknowingly purchasing product later alleged to be counterfeit is not the actionable act; rather, it is the subsequent sale of such product which gives rise to Cisco’s claims herein. In the present case, the complaint does not contain a *single allegation* of a sale of counterfeit product by Dexon to a legitimate California end consumer.

For all the above reasons, Cisco failed to provide facts sufficient to establish that Dexon intentionally sold counterfeit products to California customers and aimed such sales at California knowing it would cause harm there. *Cisco Sys. Inc.*, 2019 WL 6682838, at *4-5. Cisco has therefore not met its burden to satisfy the first prong of the specific jurisdiction analysis. *Id.* “Because failure to satisfy the first prong is dispositive on its own, the Court need not consider the second and third prongs.” *Id.* (quotation omitted). This Court may therefore conclude on the above bases that specific jurisdiction does not exist over Dexon. *Id.*

Even if Cisco could establish the first prong, however, Cisco’s allegations fail on the second prong—that its claims against Dexon “arise[] out of or relate[] to the [Dexon]’s forum-related activities.” *Axiom*, 874 F.3d at 1068. Here, the claims arise out of the manufacture and importing of counterfeit products as alleged in the Related Litigation, not the “random, fortuitous or attenuated” down-stream sales made by innocent “middle man” re-sellers like Dexon. *Matson Navigation Co., Inc. v. Sherwin-Williams Co.*, No. 17-cv-00081(EDL), 2017 WL 7310771, at *7 (N.D. Cal. Sept. 11, 2017) (*quoting Burger King*, 471 U.S. at 475). To the extent Cisco points to sales of counterfeit products, those alleged sales occurred outside California. (Doc. No. 1 at ¶¶ 36-38, ¶¶ 40-43, ¶¶ 47-52). In fact, one such example occurred in *Minnesota*. (*Id.* at ¶ 43). For all those reasons, Cisco’s allegations do not establish that Dexon’s attenuated contact arise out of or relate to the subject claims.

Likewise, even if Cisco established the first two prongs, this Court’s exercise of personal jurisdiction over Dexon would nevertheless violate the third prong’s

1 requirement that “the exercise of jurisdiction . . . comport with fair play and
 2 substantial justice, i.e. it must be reasonable.” *Axiom*, 874 F.3d at 1068. In analyzing
 3 the third prong, courts consider the following factors:

4 (1) the extent of the defendant’s purposeful injection into the forum
 5 state’s affairs; (2) the burden on the defendant of defending in the forum;
 6 (3) the extent of conflict with the sovereignty of the defendant’s state;
 7 (4) the forum state’s interest in adjudicating the dispute; (5) the most
 8 efficient judicial resolution of the controversy; (6) the importance of the
 9 forum to the plaintiff’s interest in convenient and effective relief; and (7)
 10 the existence of an alternative forum.

11 *Dole Food Co. v. Watts*, 303 F.3d 1104, 1108 (9th Cir. 2002).

12 Here, the above factors weigh in Dexon’s favor. All of the alleged sales
 13 occurred outside California. And one of those sales occurred in the appropriate
 14 forum: Minnesota. Litigating in Minnesota will not burden Cisco, which is a global
 15 company with unlimited resources. Exercising jurisdiction over Dexon in California
 16 would, therefore, not “comport with fair play and substantial justice.”
 17 *Schwarzenegger*, 374 F.3d at 802. For all the above reasons, this Court may therefore
 18 dismiss the Complaint for lack of personal jurisdiction.

19 **B. TRANSFER**

20 If this Court does not dismiss the Complaint for lack of personal jurisdiction
 21 over Dexon, Dexon respectfully requests that this Court transfer this case to the
 22 appropriate forum, the District of Minnesota.

23 1. Legal Standard

24 “For the convenience of parties and witnesses, in the interest of justice, a
 25 district court may transfer any civil action to any other district or division where it
 26 might have been brought” 28 U.S.C. § 1404(a).

27 2. The Private and Public Interest Factors Favor Transfer

28 Convenience and fairness are determined based on private and public interest
 factors, which the Court weighs on a motion to transfer. *Jones v. GNC Franchising,*
Inc., 211 F.3d 495, 498 (9th Cir. 2000). In deciding a motion to transfer, courts
 therefore balance the following factors:

(1) the location where the relevant agreements were negotiated and executed, (2) the state that is most familiar with the governing law, (3) the plaintiff's choice of forum, (4) the respective parties' contacts with the forum, (5) the contacts relating to the plaintiff's cause of action in the chosen forum, (6) the differences in the costs of litigation in the two forums, (7) the availability of compulsory process to compel attendance of unwilling non-party witnesses, and (8) the ease of access to sources of proof.

Id. at 498-99.

Here, all the factors favor a transfer. All the potential witnesses for Dexon live in Minnesota. (O'Neil Decl., ¶ 3). All the subject purchase orders, and invoices are housed or stored in Minnesota. (*Id.*, ¶ 4). All the subject agreements with Dexon's customers were negotiated in Minnesota. (*Id.*). And although California state law may apply to some claims, "the primary claims in [Cisco]'s Complaint arise under federal law—the Lanham Act," which "undermines [Cisco]'s assertion that a local court should decide its state law []claims." *Toro Co. v. Hunter Indus. Inc.*, No. 14-cv-4463 (MJD/FLN), 2015 WL 4545403, at *5 (D. Minn. July 27, 2015). "Indeed, federal district courts are 'faced almost daily with the task of applying some state's law other than that of the forum state, and [they are] capable of resolving . . . dispute[s] under [another state's] law.'" *Id.* (quoting *Hughes v. Wal-Mart Stores, Inc.*, 250 F.3d 618, 620 (8th Cir. 2001)).

Because only one factor favors Cisco (the plaintiff's interest in choosing a forum), that factor should be given minimal consideration. *See Lou v. Belzberg*, 834 F.2d 730, 739 (9th Cir. 1987) ("If the operative facts have not occurred within the forum and the forum has no interest in the parties or subject matter, [the plaintiff]'s choice [of forum] is entitled to only minimal consideration.").

For those reasons, this Court should exercise its discretion and transfer this action to the United States District Court in Minnesota.

IV. CONCLUSION

For the foregoing reasons, Dexon respectfully requests that this Court grant its motion to dismiss for lack of personal jurisdiction or, alternatively, transfer this action

1 to the United States District Court of Minnesota.

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3 Dated: September 25, 2020

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